

# **UNRAVELING THE WEB: Mental Health Issues Within the Criminal Justice System**

**December 4, 21015  
Maricopa County Security Center  
Phoenix, Arizona**



## **DEALING WITH EXPERT WITNESSES**

**Presented by:**

**SHALENE M. KIRKLEY, Ph.D.**

**Clinical and Forensic Psychologist**

**JULIE WARZNSKI**

**Deputy Maricopa County Attorney**

**Distributed by:**

**ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL**

**1951 West Camelback Road, Suite 202**

**Phoenix, Arizona 85015**

**ELIZABETH ORTIZ  
EXECUTIVE DIRECTOR**

**KIM MACEACHERN  
STAFF ATTORNEY**

In any criminal trial every person is competent to be a witness  
A.R.S. 13-4061

*Dusky v. United States,*

The test is whether the accused has sufficient present ability to consult with his lawyer “with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against him”

A.R.S. 13-4502. A person shall not be tried, convicted, sentenced or punished for an offense if the court determines that the person is incompetent to stand trial.

Rule 11.1. A person shall not be tried, convicted, sentenced or punished for a public offense, except for proceedings pursuant to A.R.S. § 36-3707(D), while, as a result of a mental illness, defect, or disability, the person is unable to understand the proceedings against him or her or to assist in his or her own defense. Mental illness, defect or disability means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease and developmental disabilities as defined in A.R.S. § 36-551. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial.

A.R.S. 13-4501 (4). “**Mental illness, defect or disability**” means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease and developmental disabilities as defined in § 36-551.

\*\*\*36-551 (17): “Developmental disability” means either a strongly demonstrated potential that a child under the age of six years is developmentally disable or will become developmentally disabled, as determined by at test performed pursuant to § 36-694 or by other appropriate tests, or a sever, chronic disability which:

- (a) Is attributable to mental retardation, cerebral palsy, epilepsy or autism.
- (b) Is manifest before age eighteen.
- (c) Is likely to continue indefinitely.
- (d) Results in substantial functional limitation in three or more of the following areas of major life activity:
  - a. Self-care
  - b. Receptive and expressive language
  - c. Learning
  - d. Mobility
  - e. Self-direction
  - f. Capacity for independent living
  - g. Economic self-sufficiency
- (e) Reflects the need for a combination and sequence of individually planned or coordinated special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration.

Any party can request a competency evaluation.

A.R.S. 13-4503

The court will order a prescreen upon request (no longer done in Maricopa County)

A.R.S. 13-4503C, Rule 11.2c

Upon review of the prescreen, if the Court finds no reasonable grounds for a full evaluation – the matter will proceed to trial

A.R.S. 13-4503, Rule 11.2d

If upon review of the prescreen, the Court finds reasonable grounds, a full evaluation is ordered and Doctors are appointed

A.R.S. 13-4501, 13-4505, Rule 11.3b(1)+(2)

Defense attorney to provide all available mental health and criminal history records of the defendant

A.R.S. 13-4503, Rule 11.2b

\*\*\*may continue with hearings and other things where defendant is not needed

The court may order that the defendant be involuntarily confined until the examination is completed if the court determines that any of the following applies:

1. The defendant will not submit to an outpatient examination as a condition of release
2. The defendant refuses to appear for an examination
3. An adequate examination is impossible without the confinement of the defendant
4. The defendant is a threat to public safety.

A.R.S. 13-4501, 13-4507, Rule 11.3d

If both doctors find that defendant is Competent:

Defense may stipulate or ask for an evidentiary hearing

A.R.S.13-4510, Rule 11.5

(the parties may stipulate to one expert/report A.R.S. 13-4505A, Rule 11.3c)

(doctors are to opine whether competency is medication dependent A.R.S 13-4509c, Rule 11.3c)

If the doctors opinions are split:

Either party may ask for an evidentiary hearing or a third doctor is appointed

If both doctors find that defendant is not competent and not restorable within statutory time frame:

Parties may stipulate or ask for an evidentiary hearing.

If stipulation, must determine if civil commitment, guardianship, or dismissal is most appropriate A.R.S. 13-4517, Rule 11.5b

\*\*\*Without substantial documentation, State asks for evidentiary hearing and

Defense has burden of proof by clear and convincing evidence A.R.S. 13-4510(c), Rule 11.5b(3)

If both doctors find that defendant is not competent but restorable:

Parties stipulate to restoration – must decide whether restoration should be in or out of custody A.R.S. 13-4510(c), Rule 11.5

Maricopa County Treatment Providers:

In custody: county board of supervisor approved program (RTC in jail)

Out of custody: court approved list

Factors determining whether in or out of custody:

1. if confinement is necessary for treatment
  2. the likelihood that the defendant is a threat to public safety
    - a. crime involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the infliction of physical injury on another person
    - b. a dangerous crime against children pursuant to section 13-705
    - c. **2 or more nondangerous felonies within a period of 24 months**
  3. the defendant's participation in and cooperation during an outpatient examination of competency to stand trial conducted pursuant to 13-4507
  4. the defendant's willingness to submit to outpatient competency restoration as a condition of pretrial release, if the defendant is eligible for pretrial release.
- A.R.S. 13-4501, 13-4512, Rule 11.5b(3)

Progress Reports:

Inpatient: after the first 120 days and then after each 180 days

Outpatient: every 60 days

Whenever person believes defendant to be competent

Whenever person believes defendant incompetent/not restorable

14 days before maximum time order is in effect

A.R.S. 13-4514, Rule 11.5d

Timeframe for Restoration:

No more than 21 months OR maximum possible sentence without enhancements whichever is less

A.R.S. 13-4515, Rule 11.5b(3)

The court shall only consider the time a defendant actually spends in a restoration Program when calculating the time

A.R.S. 13-4515B, Rule 11.5e

Subsequent Hearings:

The court shall hold a hearing to determine the defendant's progress towards regaining competency

A.R.S. 13-4514C, Rule 11.6

The parties may stipulate OR request an evidentiary hearing (within 30 days)

A.R.S. 13-4510, 13-4514, Rule 11.5, Rule 11.6

Hearing must be held within 30 days, defense may waive reasonable time

**Additional Experts:**

The court may, in its discretion, appoint additional experts and order the defendant to submit to physical, neurological or psychological examinations, if necessary for an adequate determination of the defendant's mental competency.

**Rule 11.3g**

This section does not prohibit any party from retaining its own expert to conduct any additional examinations at its own expense (however, the state can't examine defendant without his consent)

A.R.S. 13-4505

**Judicial Findings:**

If competent, defendant shall be returned to court and proceedings shall continue without delay (court may appoint clinical liaison A.R.S. 13-4513)

If continued incompetency and can be restored, continued in program

If incompetent and not restorable within statutory time frame

Remand for civil commitment (state files petition)

Appoint a guardian

Release and dismiss without prejudice

A.R.S. 13-4514, 13-4517, Rule 11.6

**Privilege:**

No evidence of any kind obtained under these provisions shall be admissible at any proceeding to determine guilt or innocence unless defendant presents evidence intended to rebut the presumption of sanity

**Statements:**

No statement of the defendant, or evidence resulting therefrom, concerning the events shall be admissible at the trial of guilt or innocence, without defendant's consent

No statement of the defendant, or evidence resulting therefrom, concerning any other events or transactions shall be admissible at any proceeding to determine defendant's guilt or innocence.

A.R.S. 13-4508, Rule 11.7

**Records:**

The reports of the experts shall be treated as confidential by the court and counsel in all respects, except the reports of other experts may be disclosed by the court and counsel to other mental health experts. After case proceeds to trial or defendant is found incompetent and not restorable, the court shall order the reports sealed. The court may order the reports opened only for further competency or sanity evaluation, statistical study or when necessary to assist in mental health treatment pursuant to restoration of competency or A.R.S. 13-502.

A.R.S. 13-4508E, Rule 11.8

## CASES:

*Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 839 (1966)

Failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial.

*Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896 (1975)

A person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.

Although a trial court need not accept without question a lawyer's representation concerning the competence of his client, an expressed doubt in that regard is unquestionably a factor which should be considered.

Evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on his competence to stand trial are all relevant in determining whether further inquiry is required, but even one of those factor, standing alone, may be sufficient in some circumstances.

The empirical relationship between mental illness and suicide or a suicide attempt is uncertain, and suicide attempt need not always signal an inability to perceive reality accurately, to reason logically, and to make plans and carry them out in an organized fashion.

Even when a defendant is competent at the commencement of his trial, the trial court must always be alert to circumstances suggesting a change that would render the defendant unable to meet the standards of competence to stand trial.

*Godinez v. Moran*, 509 U.S. 389, 113 S.Ct. 2680 (1993)

Competency required of defendant seeking to waive right to counsel is the competence to waive the right, not the competence to represent himself.

Finding that defendant is competent to stand trial is not all that is necessary before he may be permitted to plead guilty or waive his right to counsel, as trial court must satisfy itself that the waiver of the constitutional rights is knowing and voluntary; although that is a heightened standard for pleading guilty and waiving the right to counsel, it is not a heightened standard of competency.

*Indiana v. Edwards*, 554 U.S. 164, 128 S.Ct. 2379 (2008)

Court recognized a 'mental-illness-related limitation on the scope of the self-representation right.

The Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky*, but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves. Declined to adopt a 'specific standard' leaving it to discretion of the trial judge to understand the individualized circumstances of a particular defendant.

*Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525 (1975)

Defendant who knowing, voluntarily, and intelligently waives right to counsel generally must be permitted to represent himself or herself at trial.

*Jackson v. Indiana*, 406 U.S. 715, 92 S.Ct. 1845 (1972)

Petitioner who was committed under state statute relating to pretrial commitment of incompetent criminal defendants, who was thereby subjected to more lenient commitment standard and to more stringent standard of release than those generally applicable to persons not charged with offenses, and who was thus condemned in effect to permanent institutionalization without showing required for commitment or opportunity for release afforded by statutes relating to commitment of mentally ill and feebleminded persons, was deprived of equal protection of the laws.

Indefinite commitment of criminal defendant solely on account of his incompetency to stand trial was violative of due process clause.

*Cooper v. Oklahoma*, 517 U.S. 348, 116 S.Ct. 1373 (1996)

State may presume that defendant is competent to stand trial and require him to shoulder burden of proving his incompetence by a preponderance of the evidence.

*Nowell v. Rees*, 219 Ariz. 399, 199 P.3d 654 (App. 2008)

If defendant has not been restored to competency within 21 months, the court may not order additional restoration. (counted all time including time spent at ct of appeals)

Must be a positive change in defendant.

*State v. Lewis*, 236 Ariz. 336, 340 P.3d 415 (App 2014)

States that reliance in *Nowell* is misplaced. The statement relied on is a quote from an unpublished decision, was dictum as to the published opinion in *Nowell*, and did not create binding precedent. This court's opinion did not concern the evidence necessary to overcome the presumption of continued incompetence, and the court 'may not have been fully advised on the question.'

We accept, however, the premise that the trial court cannot make a subsequent finding of competence unless some new evidence – either of restoration or malingering – is presented to rebut the presumption of continued incompetence. Thus, evidence demonstrating the defendant is competent or invalidating the original determination of incompetence, such as evidence of malingering, will suffice to remove the presumption of continued incompetence.

*State v. Silva*, 222 Ariz. 457, 216 P.3d 1203 (App. 2009)

The court favors restoration attempts.

The court had the authority to determine competency despite 21 months passing (defendant spent 32 months in restoration during 3 different stay; none passed 21 months)

*Rider v. Garcia*, 233 Ariz. 314, 312 P.3d 113 (App 2013)

The State has the power to reindict defendant on murder and other charges even after original charges had been dismissed based on defendant's lack of competency.

Reasonable Basis:

*State v. Pima County*, 103 Ariz. 369, 442 P.2d 113 (1968)

Committing magistrate was without authority to grant defendant's motion for postponement of preliminary hearing, after a hearing for good cause where defendant presented evidence that he was unable to understand nature of proceedings or charges against him, and was unable to assist in his defense, and fact that superior court judge was acting as a committing magistrate was immaterial.

It is duty of committing magistrate to complete a preliminary hearing, and, if probable cause is found, to bind defendant over to superior court, regardless of defendant's mental condition.

Upon being bound over to superior court from a preliminary hearing, defendant can then request a determination of question of whether he is able to understand charges against him or to assist in his defense.

*State v. Superior Court*, 111 Ariz. 212, 526 P.2d 1234 (1974)

There should be a finding of probable cause either by the justice of the peace or by a grand jury which would justify the court holding the defendant for trial before conducting a mental examination of defendant.

*State v. Starceovich*, 139 Ariz. 378, 678 P.2d 959 (App. 1983)

Defendant who is not competent cannot be tried; defendant, prosecution and court all have duty to see that this does not occur.

*State v. Tramble*, 116 Ariz. 249, 568 P.2d 1147 (app. 1977)

Right of defendant not to be tried and convicted while incompetent and his right to competency hearing are guaranteed by due process.

*State v. Ortiz*, 117 Ariz. 264, 571 P.2d 1060 (App. 1977)

A court must order a mental examination pursuant to this rule and Criminal Rule 11.3 to determine if a defendant understands the proceedings or can assist in his defense if reasonable grounds for such an examination exist.

*State v. Messier*, 114 Ariz. 522, 562 P. 2d 402 (App. 1977)

If evidence in support of motion for examination of competency to stand trial is sufficient to give rise to doubt in mind of court as to whether defendant is competent, it is mandatory duty of court to hold hearing.

*State v. Druke*, 143 Ariz. 314, 693 P.2d 969 (App. 1984)

Trial court is vested with broad discretion in determining whether reasonable grounds exist for examination to determine whether defendant is competent to stand trial or to investigate his mental condition at the time of the offense.

*State v. Rodriguez*, 145 Ariz. 157, 700 P.2d 855 (App. 1984)

A trial court must order a mental examination to determine if a defendant understands the proceedings or can assist in his defense, but such depends upon whether



reasonable grounds for such an examination exists, and broad discretion is vested in trial court in determining existence of reasonable grounds.

*State v. Sutton*, 27 Ariz.App. 231, 553 P.2d 1216 (1976)

Trial judge who has reasonable grounds to question defendant's competency to stand trial may properly invoke, sua sponte, a procedure to determine whether defendant understands nature of charges pending against him and can assist in his own defense.

*State v. Bishop*, 137 Ariz. 5, 667 P.2d 1331 (App. 1983)

An accused has right to a mental examination and hearing to determine his competence where reasonable grounds exist to support examination and hearing.

*State v. Kuhs*, 223 Ariz. 376, 224 P.3d 192 (2010)

Reasonable grounds exist to question the accused's competency when there is sufficient evidence to indicate that the defendant is not able to understand the nature of the proceeding against him and to assist in his defense.

*State v. Steelman*, 120 Ariz. 301, 585 P.2d 1213 (1978)

Reasonable grounds exist for examination of defendant to determine if he is competent to stand trial, if there is sufficient evidence to believe that defendant is not able to understand nature of proceedings against him and to assist in his defense.

*State v. Moody*, 208 Ariz. 424, 94 P.3d 1119 (2004)

Reasonable grounds exist for a competency hearing if there is sufficient evidence to indicate that the defendant is not able to understand the nature of the proceedings against him and to assist in his defense.

*Tillery v. Eyman*, 492 F.2d 1056 (9<sup>th</sup> Cir. 1974)

When confronted with defendant's erratic and irrational behavior during trial, fact that defendant yelled and screamed from his jail cell throughout the night, that in open court defendant laughed at jury and made gestures at the bailiff and ripped off his tie and shirt when admonished to be quiet, opinion of physician that defendant was not capable of aiding in his own defense and counsel's fear that, if defendant took stand, he would seriously prejudice his case by his emotional and erratic behavior, Arizona trial court should have sua sponte conducted evidentiary hearing on defendant's competency to stand trial.

*Potter v. Vanderpool*, 225 Ariz. 495, 240 P.3d 1257 (2010)

Superior Court may not substitute its own judgment on whether reasonable grounds exist when a justice of the peace has already found that reasonable grounds exist for a full examination.

### Examinations:

*State v. Blackwood*, 112 Ariz. 552, 544 P.2d 661 (1976)

Denial of defense counsel's request to be present during examination of defendant by court-appointed doctor, superintendent of state hospital, with respect to defendant's sanity was not prejudicial error.

*State v. Schackart*, 175 Ariz. 494, 858 P.2d 639 (1993), cert denied, 114 S.Ct. 1578, 511 U.S. 1046, 128 L.Ed.2d 220

There was no showing that Rule 11 examinations by court-appointed psychiatrist were particularly subject to abuse so as to justify granting defendant right to presence of counsel during examination.

Defendant did not have constitutional right to have counsel present during psychiatric examination by court-appointed mental health expert.

### Additional Experts:

*State v. Rose*, 121 Ariz. 131, 589 P.2d 5 (1978)

Additional medical examinations to determine whether defendant was able to understand proceedings against him and to assist in his own defense were not required once trial court was given two expert opinions concluding that defendant was competent to stand trial and was aware of nature and quality of his acts.

*State v. Clabourne*, 142 Ariz. 335, 690 P.2d 54 (1984), grant of habeas corpus affirmed 64 F.3d 1373, appeal after new sentencing hearing 194 Ariz. 379, 983 P.2d 748

Criminal Rule 11.3 authorizing trial court in its discretion to appoint additional experts and order defendant to submit to physical, neurological and psychological examinations was not applicable in instance where neither of the two court-appointed psychiatrists requested additional assistance.

*State v. Bunton*, 230 Ariz. 51, 279 P.3d 1213 (App. 2012)

Mental competency statute and rules allow, but do not require a court to order, both parties to retain their own experts

Trial court acted within its discretion in rejecting state's request for court to order additional experts (had already been 2)

### Not Necessarily Rule 11:

*State v. Salazar*, 128 Ariz. 461, 626 P.2d 1093 (1981)

Trial court did not abuse its discretion in denying defendant's motion for competency examination and hearing prior to entry of guilty plea to burglary, where sole reason advanced in support of request was that defendant was a heroin addict.

Evidence of use of narcotics use alone is insufficient to establish as matter of law that defendant lacks either competency to stand trial or capacity to understand nature and consequences of guilty plea.

*State v. Harding*, 137 Ariz. 278, 670 P.2d 384 (1983)

Mere diagnosis of mental disorder does not mean that defendant is unable to make rational decisions regarding his case.

*State v. Duggan*, 112 Ariz. 157 (1975)

Ongoing psychiatric treatment is not enough

*State v. Manly*, 128 Ariz. 40, 623 P.2d 829

Guilty except insane is not the same as incompetent

*State v. Fox*, 112 Ariz. 375, 542 P.2d 800 (1975)

Fact that one of two psychiatric reports, which were made under provision of this rule granting defendant in case involving insanity defense right to psychiatric examinations, recommended further psychiatric and physical treatment to determine whether defendant's history of drinking had produced an organic deficiency or an epileptic condition did not require trial court to grant motion to allow additional testing.

*State v. Moody*, 208 Ariz. 424, 94 P.3d 1119 (2004)

If a defendant has already been adjudicated competent, the court must be permitted to rely on the record supporting that previous adjudication, when determining whether reasonable grounds exist for a second competency hearing.

*State v. Tillery*, 107 Ariz. 34, 481 P.2d 271 (1971)

Trial court's failure to order hearing to determine defendant's ability to understand nature of proceedings against him and to assist in his defense was within its discretion, even though defendant became somewhat emotionally strained at times.

*State v. Steelman*, 120 Ariz. 301, 585 P.2d 1213 (1978)

Psychiatrist's diagnosis, based on examination during trial, that defendant was insane did not establish that he was incompetent to stand trial.

*State v. Amaya-Ruiz*, 166 Ariz. 152, 800 P.2d 1260 (1990)

Trial court did not abuse its discretion in refusing to order an additional competency examination after defendant attempted to commit suicide subsequent to initial competency determination, where court had before it record previously made on each occasion when it reconsidered defendant's competency.

Defendant's struggle with sheriff's deputies in hallway outside courtroom did not afford reasonable grounds for presentence diagnostic evaluation and mental health examination to determine defendant's competency at sentencing, where trial court concluded that defendant intentionally disrupted the proceeding.

*State v. Harrod*, 218 Ariz. 268, 183 P.3d 519 (2008)

A defendant's choice not to cooperate in presenting mitigation evidence in a capital case does not give rise to reasonable grounds to grant a competency hearing.

*State v. Delharty*, 226 Ariz. 502, 250 P.3d 1131 (2012)

Capital defendant can waive mitigation upon report of one doctor. Defendant executed written waiver fully outlining what evidence would have been.

*State v. Lynch*, 225 Ariz. 27, 234 P.3d 595 (2010)

When defendant had gone through restoration already and had then been deemed competent, second request alleging the same grounds does not create a sufficient reason for another examination.

#### Continuing Duty:

*U.S. v. Ives*, 574 F.2d 1002 (9<sup>th</sup> Cir. 1978)

In the context of a second motion for a judicial determination of a defendant's competency to stand trial, counsel's belief that the defendant is incapable of cooperating in his own defense, as demonstrated by the motion itself, and the offer of competent proof thereof are factors that the trial judge must evaluate in determining whether there is 'sufficient doubt' to require a hearing.

*State v. Faye*, 134 Ariz. 565, 658 P.2d 218 (1982)

Ruling of one judge during pretrial that defendant was competent to represent himself was not the law of the case in that the trial court through that judge or another had a continuing duty to inquire into the competence of the defendant to waive fundamental constitutional rights when substantial evidence of that incompetence was presented.

#### Stipulations:

*State v. Mulligan*, 126 Ariz. 210, 613 P.2d 1266 (1980)

*State v. Hills*, 124 Ariz. 491, 605 P.2d 893 (1980)

When there is sufficient evidence in record to establish mutual intention of parties to submit competency issues solely on experts' reports, it is not reversible error for parties to fail to sign written stipulations submitting issues.

*State v. Blier*, 113 Ariz. 501, 557 P.2d 1058 (1976)

Rule which permits parties to waive competency hearing by stipulation does not require that defendant himself sign the stipulation; defense counsel, having general authority to waive the competency hearing, has general authority to sign the stipulation on defendant's behalf.

*State v. Kuhs*, 223 Ariz. 376, 224 P.3d 192

Defendant claimed that he was denied his right to a hearing because attorney's stipulated to his competence. Court concluded that attorney's only stipulated that trial court could base decision on report, and trial court's consideration of report was defendant's hearing.

#### Hearings:

*State v. Schackert*, 175 Ariz. 494, 858 P.2d 639 (1993)

If defense wishes to challenge manner in which psychiatric examination has been conducted by court-appointed expert, or expert's conclusions, this can be done on cross-examination or during testimony of its own witness.

*State v. Berger*, 171 Ariz. 117, 828 P.2d 1258 (App. 1992)

Upon defendant's return from county jail mental health unit with report indicating that he had been restored to competency, trial court was still required to hold new competency hearing with regard to defendant, who had been found incompetent, and trial court could not find defendant competent implicitly by proceeding to trial.

*State v. Dorsey*, 115 Ariz. 250, 564 P.2d 939 (App. 1977)

Where trial court has actually failed to hold necessary competency hearing, matter should be promptly called to its attention as soon as possible by counsel.

*State v. Blazak*, 110 Ariz. 202, 516 P.2d 575 (1973)

Failure of trial court to hold second competency hearing after defendant was released from state hospital where he had been committed when found to be incompetent to stand trial did not make all further proceedings, including entry by defendant of guilty pleas, void, but merely made pleas voidable, and court therefore had power to hold hearing to determine retrospectively whether defendant had been competent to plead guilty.

*State v. Bishop*, 150 Ariz. 404, 724 P.2d 23 (1986)

Determination of competency to stand trial is exclusively a question for the court; although judge may appoint mental health experts to assist him in his determination, he is not bound by their opinions and the determination of both fact and law is his.

In a competency hearing, judge may call upon both counsel as officers of the court to provide whatever conclusions and opinions they may have, together with so much of the supporting facts as may be obtained without violating either attorney-client privilege or the confidentiality provided to attorney's work product.

*State v. Glassel*, 211 Ariz. 33, 116 P.3d 1193 (2005)

The trial judge may rely on some testimony from one expert and other testimony from another expert and draw his own conclusions regarding defendant's competency to stand trial.

The trial judge is not required to accept or reject expert testimony in toto and may rely on particular views of one or more experts regarding defendant's competency to stand trial, even though the trial judge may disagree with the expert's ultimate conclusion.

*State v. Arnoldi*, 860 P.2d 530 (App 1993)

Trial court is entitled to rely on its own observation of a defendant in determining defendant's competence to stand trial.

*State v. Moody*, 208 Ariz. 424, 94 P.3d 1119 (2004)

In determining whether reasonable grounds exist for a competency hearing, a judge may rely, among other factors, on his own observations of the defendant's demeanor and ability to answer questions.

#### Review:

*State v. Messier*, 114 Ariz. 522, 562 P.2d 402 (1977)

Determinations of motions for examination of competency to stand trial are subject to review whether or not they come to court of appeals following guilty plea or a trial.

*State v. Roper*, 140 Ariz. 459, 682 P.2d 464 (App. 1984)

Trial court's broad discretion in determining if reasonable grounds exist to question defendant's competency will not be disturbed on appeal absent manifest abuse of discretion.

*State v. Hartford*, 130 Ariz. 422, 636 P.2d 1204 (1981)

Decision whether to order a competency hearing prior to sentencing is within the broad discretion of the trial judge, and unless there has been a manifest abuse of discretion, the supreme court will not reverse.

*State v. Glassel*, 211 Ariz. 33, 116 P.3d 1193 (2005)

The appellate court must determine whether reasonable evidence supports the trial court's finding that the defendant was competent to stand trial, considering the facts in the light most favorable to sustaining the trial court's finding.

## **RULES:**

### **Rule 11.1. Definition and effect of incompetency**

A person shall not be tried, convicted, sentenced or punished for a public offense, except for proceedings pursuant to A.R.S. § 36-3707(D), while, as a result of a mental illness, defect, or disability, the person is unable to understand the proceedings against him or her or to assist in his or her own defense. Mental illness, defect or disability means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease and developmental disabilities as defined in A.R.S. § 36-551. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial.

### **Rule 11.2. Motion to have defendant's mental condition examined**

**a. Motion for Rule 11 Examination.** At any time after an information or complaint is filed or indictment returned, any party may request in writing, or the court on its own motion may order, an examination to determine whether a defendant is competent to stand trial, or to investigate the defendant's mental condition at the time of the offense. The motion shall state the facts upon which the mental examination is sought. On the motion of or with the consent of the defendant, the court may order a screening examination for a guilty except insane plea pursuant to A.R.S. §§ 13-502 to be conducted by the mental health expert. In a capital case, the court shall order the defendant to undergo mental health examinations as required under A.R.S. § 13-703.02 and 13-703.03.

**b. Medical and Criminal History Records.** All available medical and criminal history records shall be provided to the court within three days of filing the motion for use by the examining mental health expert.

**c. Preliminary Examination.** The court may order that a preliminary examination be conducted pursuant to A.R.S. § 13-4503C to assist the court in determining if reasonable grounds exist to order further examination of the defendant.

**d. Jurisdiction.** Should any court determine that reasonable grounds exist for further competency hearings, the matter shall immediately transfer to the superior court for appointment of mental health experts; the superior court shall have exclusive jurisdiction over all competency hearings. If any court determines that competence is not an issue, the matter shall be immediately set for trial.

### **Rule 11.3. Appointment of Experts**

**a. Grounds for Appointment.** If the court determines that reasonable grounds for an examination exist, it shall appoint at least two mental health experts to examine the defendant and to testify regarding the defendant's mental condition. The court on its own motion or upon motion of any party may order that one of the mental health experts be a

physician specializing in psychiatry and licensed as provided in sub-section (b) of this rule.

**b. Definition of Mental Health Expert.** The term “mental health expert” shall mean:

- (1) Any physician who is licensed pursuant to Title 32, Chapter 13 and 17; or
- (2) Any psychologist who is licensed pursuant to Title 32, Chapter 19.1.

The mental health expert must be familiar with this state's competency standards and statutes; familiar with the treatment, training and restoration programs that are available in this state; and approved by the court as meeting court developed guidelines. Guidelines shall include demonstration of experience in forensics matters, required attendance at a court-approved training program of not less than 16 hours and any continuing forensic education programs required by the court, and annual review criteria.

**c. Nomination and Appointment of Experts.** The moving party may include in his or her motion a list of 3 qualified mental health experts; the other party may include such a list in a response to the motion. If the court finds that reasonable grounds for a competency examination exist, the court shall appoint two or more mental health experts from its approved list to examine the defendant, report to the court in writing within 10 days after examination of the defendant and, if necessary, testify with regard to the defendant's competence. If the appointed expert is unable to conduct the examination within the time allotted, the expert shall immediately inform the court and another expert shall be appointed. Upon approval of the court, the prosecution and the defense may stipulate to the appointment of only one expert.

**d. Custody Status of Defendant During Competency Proceedings.** Custody status of the defendant shall be determined pursuant to A.R.S. § 13-4507.

**e. Experts' Reports.** The experts' reports shall conform to A.R.S. § 13-4509.

**f. Experts' Reports on Guilty Except Insane Pleas.**

(1) If the defendant raises a defense pursuant to A.R.S. § 13-502, on request of the court or any party, with the consent of the defendant, and if the offense involves death or serious physical injury that a reasonable basis exists to support the plea, the mental health expert who is appointed pursuant to A.R.S. § 13-4505 shall provide a screening report to evaluate competency that includes the provisions of A.R.S. § 13-4506.

(2) If the defendant's state of mind at the time of the offense will be included in the examination, the court shall not appoint the expert to address this issue until the court receives the medical and criminal history records of the defendant.



(3) Within ten working days after the expert is appointed, the parties shall provide any additional medical or criminal history records that are requested by the court or the expert.

**g. Additional Expert Assistance.** The court may, in its discretion, appoint additional experts and order the defendant to submit to physical, neurological or psychological examinations, if necessary for an adequate determination of the defendant's mental competency.

#### Rule 11.4. Disclosure of mental health evidence

**a. Reports of Appointed Experts.** The reports of experts made pursuant to Rule 11.3 shall be submitted to the court within ten working days of the completion of the examination and be made available to all parties, except that any statement or summary of the defendant's statements concerning the offense charged shall be made available only to the defendant. Upon receipt, court staff will copy and distribute the expert's report to the court and to defense counsel. Defense counsel is responsible for editing a copy for the State which is to be returned to court staff within 24 hours of receipt and made available for the State.

**b. Reports of Other Experts.** At least 15 working days prior to any hearing, the parties shall make available to the opposite party for examination and reproduction the names and addresses of mental health experts who have personally examined a defendant or any evidence in the particular case, together with the results of mental examinations of scientific tests, experiments or comparisons, including all written reports or statements made by them in connection with the particular case.

#### Rule 11.5. Hearing and Orders

**a. Hearing.** Within 30 days after the expert reports have been submitted to the court, the court shall hold a hearing to determine the defendant's competency. The parties may introduce other evidence regarding the defendant's mental condition, or by written stipulation, submit the matter on the experts' reports.

**b. Orders.** After the hearing:

(1) If the court finds that the defendant is competent, proceedings shall continue without delay.

(2) If the court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within 21 months of the date found incompetent, it may, upon request of any party,

(i) Remand defendant to Department of Health Services to begin civil commitment proceedings pursuant to Title 36, Chapter 5;

(ii) Order appointment of a guardian pursuant to Title 14, Chapter 5;

(iii) Release the defendant from custody and dismiss the charges without prejudice.

(3) If the court determines that the defendant is incompetent, it shall order competency restoration treatment unless there is clear and convincing evidence that defendant will not regain competency within 15 months. The court shall determine whether the defendant should be subject to involuntary treatment and may extend the treatment for six months beyond the 15 month limit if it finds defendant is making progress toward restoration of competency. All treatment orders shall specify the place where treatment will occur; whether the treatment is inpatient or outpatient pursuant to A.R.S. § 13-4512(A); transportation to the treatment site; length of treatment; and transportation after treatment. The treatment order shall specify that the court shall be notified if the defendant regains competency before the expiration of the order of commitment.

**c. Modification of Order.** The court may modify any order under Rule 11.5(b)(3) at any time.

**d. Reports.** The court shall order the person supervising defendant's court-ordered restoration treatment to file a report with the court, the prosecutor, the defense attorney and the clinical liaison as follows: 1) for inpatient treatment, 120 days after the court's original treatment order and each 180 days thereafter; 2) for outpatient treatment, every 60 days; 3) when the person supervising the defendant believes defendant is competent to stand trial; 4) when the person supervising the defendant concludes defendant will not be restored to competence within 21 months of the court's finding of incompetence; 5) 14 days before the expiration of the court's treatment order.

The treatment supervisor's report must include at least the following:

(1) the name of the treatment supervisor;

(2) description of the nature, content, extent and results of the examination and tests conducted;

(3) facts on which the treatment supervisor's findings are based; and

(4) treatment supervisor's opinion as to defendant's competency to understand the nature of the court proceeding and assist in his or her defense.

If the treatment supervisor finds the defendant remains incompetent, the report must also include:

(5) nature of the mental disease, defect or disability that is the cause of the incompetency;

(6) prognosis as to defendant's restoration to competency and estimated time period for restoration to competence;

(7) recommendations for treatment modifications.

If the treatment supervisor finds the defendant has regained competence, the report must also include any limitations imposed by medications used in restoration treatment.

**e. Calculation of time.** The court shall only consider the time a defendant actually spends in a restoration to competency program when calculating the time requirements pursuant to subsection A of A.R.S. § 13-4515.

## 11.6. Subsequent Hearings

**a. Grounds.** The court shall hold a hearing to redetermine the defendant's competency:

(1) Upon receiving a report from an authorized official of the institution in which a defendant is hospitalized under Rule(b)(2)(i) or (3) stating that in the official's opinion the defendant has become competent to stand trial; or

(2) Upon motion of the defendant, accompanied by the certificate of a mental health expert stating that in the expert's opinion the defendant is competent to stand trial; or

(3) At the expiration of the maximum period set by the court pursuant to Rule 11.5(b)(3); or

(4) On the court's motion at any time.

**b. Counsel and Experts.** During proceedings under this section, the defendant shall be entitled to the rights to counsel provided under Rule 6. The court, in its discretion, may appoint new mental health experts under Rule 11.3.

**c. Finding of Competency.** If the court finds that the defendant is competent, the regular proceedings shall commence again without delay, the defendant being entitled to repeat any proceeding if there are reasonable grounds to believe he or she was prejudiced by his or her previous incompetency.

**d. Finding of Continuing Incompetency.** If the court finds that the defendant is still incompetent, it shall proceed in accordance with rules 11.5(b)(2) and (3) unless the court determines that there is a substantial probability that the defendant will regain competency within the foreseeable future, then the court shall renew and may modify the treatment order for not more than an additional 180 days.

**e. Dismissal of Charges.** The court may in its discretion order the dismissal of the charges against any defendant adjudged incompetent at any time, after providing notice and a hearing pursuant to A.R.S. § 13-4515(C). Upon dismissal of the charges the defendant shall be released from custody unless the court finds that the defendant's condition warrants a civil commitment hearing pursuant to Title 36, Chapter 5.

## 11.7. Privilege

**a. General Restriction.** No evidence of any kind obtained under these provisions shall be admissible at any proceeding to determine guilt or innocence unless the defendant presents evidence intended to rebut the presumption of sanity.

**b. Privileged Statements of Defendant.**

(1) No statement of the defendant obtained under these provisions, or evidence resulting therefrom, concerning the events which form the basis of the charges against the defendant shall be admissible at the trial of guilt or innocence, or at any subsequent proceeding to determine guilt or innocence, without his or her consent.

(2) No statement of the defendant or evidence resulting therefrom obtained under these provisions, concerning any other events or transactions, shall be admissible at any proceeding to determine the defendant's guilt or innocence of criminal charges based on such events or transactions.

## STATUTES:

### 13-4501. Definitions

In this chapter, unless the context otherwise requires:

1. **“Clinical liaison”** means a mental health expert or any other individual who has experience and training in mental health or developmental disabilities and who is qualified and appointed by the court to aid in coordinating the treatment or training of individuals who are found incompetent to stand trial. If mental retardation is an issue, the clinical liaison shall be an expert in mental retardation.
2. **“Incompetent to stand trial”** means that as a result of a mental illness, defect or disability a defendant is unable to understand the nature and object of the proceeding or to assist in the defendant's defense. In the case of a person under eighteen years of age when the issue of competency is raised, incompetent to stand trial also means a person who does not have sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the person. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial.
3. **“Mental health expert”** means a physician who is licensed pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed pursuant to title 32, chapter 19.1 and who is:

- (a) Familiar with this state's competency standards and statutes.
- (b) Familiar with the treatment, training and restoration programs that are available in this state.
- (c) Certified by the court as meeting court developed guidelines using recognized programs or standards.

4. **“Mental illness, defect or disability”** means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease and developmental disabilities as defined in § 36-551.

\*\*\*36-551 (17): “Developmental disability” means either a strongly demonstrated potential that a child under the age of six years is developmentally disable or will become developmentally disabled, as determined by at test performed pursuant to § 36-694 or by other appropriate tests, or a sever, chronic disability which:

- (e) Is attributable to mental retardation, cerebral palsy, epilepsy or autism.
- (f) Is manifest before age eighteen.
- (g) Is likely to continue indefinitely.
- (h) Results in substantial functional limitation in three or more of the following areas of major life activity:
  - a. Self-care
  - b. Receptive and expressive language
  - c. Learning
  - d. Mobility
  - e. Self-direction
  - f. Capacity for independent living
  - g. Economic self-sufficiency
- (e) Reflects the need for a combination and sequence of individually planned or coordinated special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration.)

5. **“Threat to public safety”** means charged with the commission of any of the following:

- (a) A crime involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the infliction of physical injury on another person.
- (b) A dangerous crime against children pursuant to section 13-705.
- (c) Two or more nondangerous felonies within a period of twenty-four months.

### **13.4502. Effect of incompetency**

- A.** A person shall not be tried, convicted, sentenced or punished for an offense if the court determines that the person is incompetent to stand trial.
- B.** The prosecutor or defense attorney may file any pretrial motion at any time while the defendant is incompetent to stand trial. The court shall hear and decide any issue presented by the motion if the defendant's presence is not essential for a fair hearing as determined by the court.

### **13-4503. Request for competency examination**

- A.** At any time after the prosecutor charges a criminal offense by complaint, information or indictment, any party or the court on its own motion may request in writing that the defendant be examined to determine the defendant's competency to stand trial, to enter a plea or to assist the defendant's attorney. The motion shall state the facts on which the mental examination is sought.
- B.** Within three working days after a motion is filed pursuant to this section, the parties shall provide all available medical and criminal history records to the court.
- C.** The court may request that a mental health expert assist the court in determining if reasonable grounds exist for examining a defendant.
- D.** Once any court determines that reasonable grounds exist for further competency proceedings, the superior court shall have exclusive jurisdiction over all competency hearings.

### **13-4504. Dismissal of misdemeanor charges; notice**

- A.** Notwithstanding any law to the contrary, if the court finds that a person has been previously adjudicated incompetent to stand trial pursuant to this chapter, the court may hold a hearing to dismiss any misdemeanor charge against the incompetent person. The court shall give ten days' notice to the prosecutor and the defendant of this hearing. On receipt of the notice, the prosecutor shall notify the victim of the hearing.
- B.** If a misdemeanor charge is dismissed pursuant to this section, the court may order the prosecutor to initiate civil commitment or guardianship proceedings.

### **13-4505. Appointment of experts; costs**

- A.** If the court determines pursuant to § 13-4503 that reasonable grounds exist for a competency examination, the court shall appoint two or more mental health experts to examine the defendant, issue a report and, if necessary, testify regarding the defendant's competency. The court, on its own motion or upon motion of any party, may order that

one of the mental health experts appointed shall be a physician specializing in psychiatry and licensed pursuant to title 32, chapter 13 or 17. The state and the defendant, upon approval of the court, may stipulate to the appointment of only one expert.

**B.** The court may order the defendant to submit to physical, neurological or psychological examinations, if necessary, to adequately determine the defendant's mental condition.

**C.** The court shall order the defendant to pay the costs of the court ordered examination, except that if the court finds the defendant is indigent or otherwise unable to pay all or any part of the costs or if the prosecution requested the examination, the court shall order the county to pay the costs of the examination or, if the case is referred by a municipal court judge, the court shall order the city to pay the costs of the examination.

**D.** This section does not prohibit any party from retaining its own expert to conduct any additional examinations at its own expense.

**E.** A person who is appointed as a mental health expert or clinical liaison is entitled to immunity, except that the mental health expert or clinical liaison may be liable for intentional, wanton or grossly negligent acts that are done in the performance of the expert's or liaison's duties.

### **13-4506. Examination for purposes of insanity defense**

**A.** On request of the court or any party, with the consent of the defendant and after a determination that a reasonable basis exists to support the plea of insanity, the mental health expert who is appointed pursuant to § 13-4505 shall provide a screening report that includes:

1. The mental status of the defendant at the time of the offense.

2. If the expert determines that the defendant suffered from a mental disease, defect or disability at the time of the offense, the relationship of the disease, defect or disability to the alleged offense.

**B.** If the defendant's state of mind at the time of the offense will be included in the examination, the court shall not appoint the expert to address this issue until the court receives the medical and criminal history records of the defendant.

**C.** Within ten working days after the expert is appointed, the parties shall provide any additional medical or criminal history records that are requested by the court or the expert.

### **13-4507. Examination of competency to stand trial**

- A.** The court shall set and may change the conditions under which the examination is conducted.
- B.** The defense attorney shall be available to the mental health expert conducting the examination.
- C.** A proceeding to determine if a defendant is competent to stand trial shall not delay a judicial determination of the defendant's eligibility for pretrial release. A defendant who is otherwise entitled to pretrial release shall not be involuntarily confined or taken into custody solely because the issue of the defendant's competence to stand trial is raised and an examination is ordered unless the court determines that the defendant's confinement is necessary for the evaluation process.
- D.** If a defendant is released from custody under any pretrial release provision, the court may order the defendant to appear at a designated time and place for an outpatient examination. The court may make the appearance a condition of the defendant's pretrial release.
- E.** The court may order that the defendant be involuntarily confined until the examination is completed if the court determines that any of the following applies:
- 1.** The defendant will not submit to an outpatient examination as a condition of pretrial release.
  - 2.** The defendant refuses to appear for an examination.
  - 3.** An adequate examination is impossible without the confinement of the defendant.
  - 4.** The defendant is a threat to public safety.
- F.** If a defendant is committed for an inpatient examination, the length of the commitment shall not exceed the period of time that is necessary for the examination. The commitment for examination shall not exceed thirty days, except that the commitment may be extended by fifteen days if the court finds that extraordinary circumstances exist. The county shall pay the costs of any inpatient examination ordered by the court, except that the city shall pay the costs of any inpatient examination that is ordered by a municipal court judge.

### **13-4508. Privilege against self-incrimination; sealed reports**

- A.** The privilege against self-incrimination applies to any examination that is ordered by the court pursuant to this chapter.



**B.** Any evidence or statement that is obtained during an examination is not admissible at any proceeding to determine a defendant's guilt or innocence unless the defendant presents evidence that is intended to rebut the presumption of sanity.

**C.** Any statement made by the defendant during an examination or any evidence resulting from that statement concerning any other event or transaction is not admissible at any proceeding to determine the defendant's guilt or innocence of any other criminal charges that are based on those events or transactions.

**D.** Any statement made by the defendant or any part of the evaluations that is obtained during an examination may not be used for any purpose without the written consent of the defendant or the defendant's guardian or a court order that is entered by the court that ordered the examination or that is conducting a dependency or severance proceeding.

**E.** After a plea of guilty or guilty except insane or the trial or after the defendant is found to be unable to be restored to competence, the court shall order all the reports submitted pursuant to this section sealed. The court may order that the reports be opened only as follows:

1. For use by the court or defendant, or by the prosecutor if otherwise permitted by law, for further competency or sanity evaluations.
2. For statistical analysis.
3. When the records are deemed necessary to assist in mental health treatment pursuant to § 13-502 or 13-4517.
4. For use by the probation department or the state department of corrections if the defendant is in the custody of or is scheduled to be transferred into the custody of the state department of corrections for the purposes of assessment and supervision or monitoring of the defendant by that department.
5. For use by a mental health treatment provider that provides treatment to the defendant or that assesses the defendant for treatment.
6. For data gathering.
7. For scientific study.

**F.** Any statement made by the defendant during an examination that is conducted pursuant to this chapter or any evidence resulting from that statement is not subject to disclosure pursuant to § 36-509.

### **13-4509. Expert's report**

**A.** An expert who is appointed pursuant to § 13-4505 shall submit a written report of the examination to the court within ten working days after the examination is completed. The report shall include at least the following information:

1. The name of each mental health expert who examines the defendant.
2. A description of the nature, content, extent and results of the examination and any test conducted.
3. The facts on which the findings are based.
4. An opinion as to the competency of the defendant.

**B.** If the mental health expert determines that the defendant is incompetent to stand trial, the report shall also include the following information:

1. The nature of the mental disease, defect or disability that is the cause of the incompetency.
2. The defendant's prognosis.
3. The most appropriate form and place of treatment in this state, based on the defendant's therapeutic needs and potential threat to public safety.
4. Whether the defendant is incompetent to refuse treatment and should be subject to involuntary treatment.

**C.** If the mental health examiner determines that the defendant is currently competent by virtue of ongoing treatment with psychotropic medication, the report shall address the necessity of continuing that treatment and shall include a description of any limitations that the medication may have on competency.

### **13-4510. Competency hearing and orders**

**A.** Within thirty days after the report is submitted, the court shall hold a hearing to determine a defendant's competency to stand trial. The parties may introduce other evidence regarding the defendant's mental condition or may submit the matter by written stipulation on the expert's report.

**B.** If the court finds that the defendant is competent to stand trial, the proceedings shall continue without delay.

**C.** If the court initially finds that the defendant is incompetent to stand trial, the court shall order treatment for the restoration of competency unless there is clear and convincing evidence that the defendant will not be restored to competency within fifteen months. The court may extend the restoration treatment by six months if the court determines that the defendant is making progress toward the goal of restoration.

**D.** All treatment orders issued by the court shall specify the following:

1. The place where the defendant will receive treatment.
2. Transportation to the treatment site.
3. The length of the treatment.
4. Transportation after treatment.
5. The frequency of reports.

#### **13-4511. Competency to refuse treatment; length of sentence**

If the court finds that a defendant is incompetent to stand trial, the court shall determine:

1. If the defendant is incompetent to refuse treatment, including medication, and should be subject to involuntary treatment.
2. The maximum sentence the defendant could have received pursuant to § 13-702, § 13-703, § 13-704, subsection A, B, C, D or E, § 13-705, § 13-706, subsection A, § 13-707, § 13-708, subsection D, § 13-710 or § 13-1406 or the sentence the defendant could have received pursuant to § 13-751, subsection A or any section for which a specific sentence is authorized. In making this determination the court shall not consider the sentence enhancements for prior convictions under § 13-703 or 13-704.

#### **13-4512. Treatment order; commitment**

**A.** The court may order a defendant to undergo out of custody competency restoration treatment. If the court determines that confinement is necessary for treatment, the court shall commit the defendant for competency restoration treatment to the competency restoration treatment program designated by the county board of supervisors.

**B.** If the county board of supervisors has not designated a program to provide competency restoration treatment, the court may commit the defendant for competency restoration treatment to the Arizona state hospital, subject to funding appropriated by the legislature to the Arizona state hospital for inpatient competency restoration treatment services, or to any other facility that is approved by the court.

**C.** A county board of supervisors that has designated a county restoration treatment program may enter into contracts with providers, including the Arizona state hospital, for inpatient, in custody competency restoration treatment. A county competency restoration treatment program may do the following:

1. Provide competency restoration treatment to a defendant in the county jail, including inpatient treatment.
2. Obtain court orders to transport the defendant to other providers, including the Arizona state hospital, for inpatient, in custody competency restoration treatment.

**D.** In determining the type and location of the treatment, the court shall select the least restrictive treatment alternative after considering the following:

1. If confinement is necessary for treatment.
2. The likelihood that the defendant is a threat to public safety.
3. The defendant's participation in and cooperation during an outpatient examination of competency to stand trial conducted pursuant to § 13-4507.
4. The defendant's willingness to submit to outpatient competency restoration treatment as a condition of pretrial release, if the defendant is eligible for pretrial release.

**E.** An order entered pursuant to this section shall state if the defendant is incompetent to refuse treatment, including medication, pursuant to § 13-4511.

**F.** A defendant shall pay the cost of inpatient, in custody competency restoration treatment unless otherwise ordered by the court. If the court finds the defendant is unable to pay all or a portion of the costs of inpatient, in custody treatment, the state shall pay the costs of inpatient, in custody competency restoration treatment at the Arizona state hospital that are incurred until:

1. Seven days, excluding Saturdays, Sundays or other legal holidays, after the hospital submits a report to the court stating that the defendant has regained competency or that there is no substantial probability that the defendant will regain competency within twenty-one months after the date of the original finding of incompetency.
2. The treatment order expires.
3. Seven days, excluding Saturdays, Sundays or other legal holidays, after the charges are dismissed.

**G.** The county, or the city if the competency proceedings arise out of a municipal court proceeding, shall pay the hospital costs that are incurred after the period of time designated in subsection F of this section and shall also pay for the costs of inpatient, in

custody competency restoration treatment in court approved programs that are not programs at the Arizona state hospital.

**H.** Payment for the cost of outpatient community treatment shall be the responsibility of the defendant unless:

1. The defendant is enrolled in a program which covers the treatment and which has funding available for the provision of treatment to the defendant, and the defendant is eligible to receive the treatment. Defendants in these circumstances may be required to share in the cost of the treatment if cost sharing is required by the program in which the defendant is enrolled.

2. The court finds that the defendant is unable to pay all or a portion of treatment costs or that outpatient treatment is not otherwise available to the defendant. For defendants in these circumstances, all or a portion of the costs of outpatient community treatment shall be borne by the county or the city if the competency proceedings arise out of a municipal court proceeding.

**I.** A treatment order issued pursuant to this section is valid for one hundred eighty days or until one of the following occurs:

1. The treating facility submits a report that the defendant has regained competency or that there is no substantial probability that the defendant will regain competency within twenty-one months after the date of the original finding of incompetency.

2. The charges are dismissed.

3. The maximum sentence for the offense charged has expired.

4. A qualified physician who represents the Arizona state hospital determines that the defendant is not suffering from a mental illness and is competent to stand trial.

**J.** The Arizona state hospital shall collect census data for adult restoration to competency treatment programs to establish maximum capacity and the allocation formula required pursuant to section 36-206, subsection D. The Arizona state hospital or the department of health services is not required to provide restoration to competency treatment that exceeds the funded capacity. If the Arizona state hospital reaches its funded capacity in either or both the adult male or adult female restoration to competency treatment programs, the superintendent of the state hospital shall establish a waiting list for admission based on the date of the court order issued pursuant to this section.

### **13-4513. Appointment of clinical liaison**

**A.** If the court enters a treatment order pursuant to this chapter, the court shall appoint a clinical liaison to coordinate the continuity of care following restoration. The clinical liaison may not be the defendant's treatment supervisor. The clinical liaison shall be

familiar with aftercare facilities that are available in the defendant's locale and shall act as a liaison between the court and any treating facilities or correctional facilities.

**B.** The county, or the city if the competency proceedings are conducted in municipal court, shall pay the clinical liaison's fees.

**C.** The clinical liaison shall submit a written report to the court on request. The court shall distribute copies of the report to the prosecutor and the defense attorney.

**D.** The clinical liaison in cooperation with the treating facility shall advise the court on matters relating to the appropriateness of the form and location of treatment, including the level of security.

**E.** A treatment facility shall cooperate fully with the clinical liaison and shall provide the liaison with access to the defendant's records. The clinical liaison shall not direct treatment or render an opinion on the defendant's competency.

#### **13-4514. Progress reports; rehearings**

**A.** The person who supervises the treatment of a defendant who has been ordered to undergo treatment pursuant to § 13-4512 shall submit a written report to the court which shall make the report available to the prosecutor, the defense attorney and the clinical liaison as follows:

1. For inpatient treatment, after the first one hundred twenty days of the original treatment order and after each one hundred eighty days of treatment thereafter.
2. For outpatient treatment, every sixty days.
3. Whenever the person believes the defendant is competent to stand trial.
4. Whenever the person believes that there is no substantial probability that the defendant will regain competency within twenty-one months after the date of the original finding of incompetency.
5. Fourteen days before the expiration of the maximum time that an order issued pursuant to § 13-4512 or this section is in effect.

**B.** The report shall include the examiner's findings and the information required under § 13-4509. If the report states that the defendant remains incompetent, the report shall state the likelihood that the defendant will regain competency, an estimated time period for the restoration of competency and recommendations for treatment modification, if necessary. If the report states that the defendant has regained competency, the report shall state the effect, if any, of any limitations that are imposed by any medications used in the effort to restore the defendant's competency.

**C.** The court shall hold a hearing to determine the defendant's progress towards regaining competency as follows:

1. On the court's own motion.

2. On receipt of a report that is submitted by the treating facility pursuant to subsection A, paragraph 3, 4 or 5 of this section.

**D.** If at the hearing the court finds that the defendant has regained competency, the defendant shall be returned to the court and the proceedings against the defendant shall continue without delay. The court may order continued involuntary medication pursuant to § 13-4511 pending final disposition of this case in the trial court if the court finds that there is not a less intrusive alternative, the medication was medically appropriate and that it is essential for the sake of the defendant's safety or the safety of others.

**E.** If at the hearing the court finds that the defendant is incompetent to stand trial but that there is a substantial probability that the defendant will regain competency within the foreseeable future, the court shall renew and, if appropriate, modify the treatment order for not more than an additional one hundred eighty days. The court may make this determination without a formal hearing if all of the parties agree.

**F.** If at the hearing the court finds that the defendant is incompetent to stand trial and that there is not a substantial probability that the defendant will regain competency within twenty-one months after the date of the original finding of incompetency, the court shall proceed pursuant to § 13-4517.

### **13-4515. Duration of order; excluded time calculation; notice of dismissed charge or voided order; petitions**

**A.** An order or combination of orders that is issued pursuant to § 13-4512 or 13-4514 shall not be in effect for more than twenty-one months or the maximum possible sentence the defendant could have received pursuant to § 13-702, § 13-703, § 13-704, subsection A, B, C, D or E, § 13-705, § 13-706, subsection A, § 13-708, subsection D or § 13-751 or any section for which a specific sentence is authorized, whichever is less. In making this determination the court shall not consider the sentence enhancements under § 13-703 or 13-704 for prior convictions.

**B.** The court shall only consider the time a defendant actually spends in a restoration to competency program when calculating the time requirements pursuant to subsection A of this section.

**C.** The court shall notify the prosecutor, the defense attorney, the medical supervisor and the treating facility if the charges against the defendant are dismissed or if an order is voided by the court. No charges shall be dismissed without a hearing prior to the dismissal.

**D.** If a defendant is discharged or released on the expiration of an order or orders issued pursuant to § 13-4512 or 13-4514, the medical supervisor may file a petition stating that the defendant requires further treatment pursuant to title 36, chapter 5 or appointment of a guardian pursuant to title 14.

#### **13-4516. Notice to central state repository; records**

**A.** The court shall notify the central state repository established by § 41-1750 of any commitment that is ordered or any release that is authorized under this chapter and of any determination that a defendant has regained competency to stand trial.

**B.** The court and the department of health services shall keep records of the offenses for which a defendant was charged, any court ordered examinations and treatment outcomes.

#### **13-4517. Incompetent defendants; disposition**

If the court finds that a defendant is incompetent to stand trial and that there is no substantial probability that the defendant will regain competency within twenty-one months after the date of the original finding of incompetency, any party may request that the court:

1. Remand the defendant to the custody of the department of health services for the institution of civil commitment proceedings pursuant to title 36, chapter 5.
2. Appoint a guardian pursuant to title 14, chapter 5.
3. Release the defendant from custody and dismiss the charges against the defendant without prejudice.